IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/09/2004

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THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

W.P.No.22843 of 2004

1. Mrs.Sundari Gopal
2. Mr.Sudharsan Rao Reddy .. Petitioners

-vs-

1. The Chief Immigration Officer
Shastri Bavan Annexe
26, Haddows Road
Chennai-600 006.

2. The Regional Passport Officer
Shastri Bavan
26, Haddows Road
Chennai-600 006.

3. Mr.K.S.Daulat Thameem
Public Relations Officer
Passport Office
Chennai-600 006.

4. The Inspector of Police
J.J. Nagar Police Station
Mogappair (West)
Chennai-600 037.

5. Mr.Gajendran
Investigation Officer
Koyambedu Police Station
Koyambedu, Chennai. .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for the issue of a writ of Mandamus directing the first respondent to consider the passport bearing No.A 5311126 issued by the Regional Passport Office, Chennai, which is a genuine one and to allow the first petitioner to travel abroad using the same and to direct the first respondent to give due compensation to the second petitioner herein for the irreparable loss and hardship caused to him due to his termination from service.

For petitioner : Miss.Elvina Daniel

For respondents-1 to 3 : Mr.K.Ramakrishna Reddy
S.C.G.S.C.

For respondents-4 & 5 : Miss V.Velumani
Addl. Government
Pleader

:ORDER

The petitioner seeks for a writ of Mandamus to direct the first respondent to consider the passport bearing No.A 5311126 issued by the Regional Passport Office, Chennai, which is a genuine one and to allow the first petitioner to travel abroad using the same and to direct the first respondent to give due compensation to the second petitioner for the irreparable loss and hardship caused to him due to his termination from service.

2. The first petitioner submits that she is employed as Nursing Care Assistant in a Nursing Home in the U.K. and her husband, the second petitioner, is also employed in the U.K. as a Security Guard. They came to India on a three week holiday and arrived at Chennai on 6.3.20 04 via Colombo by Air Lanka. Their permanent address got on lease is at No.8, V.O.C. Street, Mogappair (West), Chennai-37. Although they were working out of India, their landlord Mr.Appikutti received all their communications and looked after their affairs pertaining to the house.

3. After their three week stay in India, they decided to return back to their duties at England. They were about to board the 9.00 p.m. Air Lanka flight on 22.3.2004. At the time of checking their passports, the Immigration Authorities required verification of the passport of the first petitioner. They are alleged to have behaved very rudely towards her husband, and the first petitioner was told that the passport furnished by her was not genuine. They further alleged that the passport had been tampered with, as the thread holding the papers together in the passport was slightly loose. According to the petitioners, it was the first respondent who was trying to peel the thread and the paper with his nails. They also threatened the first petitioner with imprisonment for five years. The first respondent refused to clear her immigration check-up and consequently refused to allow her to embark. Both of them tried to convince the first respondent that the first petitioner was the owner of the passport but without any avail. The second petitioner was very much disappointed, as he could not rejoin duty, but being the first petitioner's husband, he could not leave her back in India. Therefore, they re-booked their flight tickets and returned home.

4. On 23.3.2004, when they approached the Regional Passport Office, the second respondent advised them to apply for a duplicate passport by completing the necessary formalities. The first petitioner had been travelling in the same passport for the past six years and she had never faced

any problem. However, as per the advise of the second respondent, on 25.3.2004, she applied for a duplicate passport by enclosing the old passport. They were anxiously waiting for the formalities to be complied with. As no communication was received, on 5.5.20 04, they sent an E-mail requesting for further information. A communication by ordinary post dated 17.5.2004 was received stating that an adverse report had been recorded, as the petitioners were not found to be living continuously in the address furnished by them. As the said letter did not contain their correct address, the petitioners issued a letter dated 20.5.2004, giving their correct address.

5. The petitioners claim that they were continuously living in the same address, waiting for the Verification Officer to conclude his verification. Even though they have bought a new flat in a nearby street, they continued to be in the rented house, as they were waiting for the passport formalities to be completed.

6. After receiving the adverse report, the first petitioner was once again required to apply through Personal Particulars Form on 25.5.20 04. Since she was in urgent need of her passport, she wanted to apply through the "Tatkal" scheme, but she was not allowed to do so by the passport office, on the ground that she had already submitted her duplicate passport along with her first application dated 25.3.2004. The first petitioner was informed that the police will visit their residence within the next three days. But none turned up. The first petitioner's husband visited the second respondent's office for more than three times without any avail.

7. In the meantime, they have been sending letters to their respective employers to extend their leave. Though the first petitioner had not received any positive communication, she was not receiving any salary

after her paid holidays had lapsed. The services of the second petitioner were terminated by his employer as communicated by fax message dated 16.6.2004, as he could not rejoin duty on time.

8. After the passage of 25 days, on 20.6.2004, one Gajendran, designating himself as Investigating Officer, Koyambedu Police Station, visited their new residence. The first petitioner was away as it was a Sunday and had gone to visit her sick mother at Besant Nagar and the second petitioner who was present, had clarified that the first petitioner would return by the evening. In spite of such repeated requests, the fifth respondent had sent an adverse report. The petitioners further state that on the basis of the said adverse report, the file was closed by the Regional Passport Office.

9. The petitioners visited the office of the second respondent on 15 .7.2004 to present a requisition to reopen the file and to issue a duplicate passport. But the third respondent refused to receive the two requisitions and it is alleged that he had abused and manhandled the second petitioner. Hence, the above writ petition.

10. This writ petition was taken up for admission on 10.8.2004 by R.Balasubramanian,J., and notice was ordered to the Standing Counsel. Learned Senior Central Government Standing Counsel took notice on behalf of respondents-1 to 3 on 11.8.2004 and in view of the urgency, the learned Judge had directed the Registry to post the writ petition for disposal on 25.8.2004 and directed the respondents to file counter by that date.

11. Learned counsel for the petitioners very vehemently contends that for no fault of the petitioners, they are made to suffer, resulting in loss of reputation, being accused as though they had manipulated the passport and also the resultant delay having resulted in the second petitioner losing his job. The passport, being an old one containing past endorsements, cannot be suspected as a manipulated one. The petitioners cannot also be held responsible for the defects, if any, which are not clearly stated by the respondents. If the first petitioner had been guilty of any manipulation or misconduct, then the respondents would not have directed her to apply for a duplicate passport. Direction to apply for a duplicate passport was totally unnecessary as the passport was genuine. After applying for duplicate passport also, problems continued and an adverse report was sent by the police only for the reason that the first petitioner was not present in the address at the moment when the police officer had come. The next time, though the husband of the first petitioner had informed the police that the first petitioner had gone out and would return the same evening, the police officer had refused to see the reality. The attitude of the respondents is totally inhumane and their behaviour was also abusive and provocative, apart from having caused irreparable damage to the career and future of both the petitioners.

12. Though no counter affidavit has been filed, on instructions from the Regional Passport Office, Mr.Ramakrishna Reddy, learned Senior Central Government Standing Counsel appearing for respondents-1 to 3, submits as follows.

13. Learned counsel for respondents-1 to 3 submits that the first petitioner had approached the third respondent stating that she was not permitted to board the flight by the Immigration Authorities suspecting the genuineness of the passport and regarding the thread in the middle page of the passport. She therefore had requested the passport office to issue Genuineness Certificate. The third respondent, who had scrutinised her passport, had advised her to apply for a duplicate passport in lieu of the damaged passport with a view to avoid any hardship in future. Accordingly, she had applied for the issue of a duplicate passport, mentioning her address as 8, VOC Street, Ambattur, Chennai. But they had received adverse police report dated 6.4.2004 with the remark "insufficient address" from the Superintendent of Police, Chenglepet. The first petitioner was informed of the said fact on 17.5.2004. The request of the first petitioner was re-considered and referred for police verification at the changed address. Again, the second respondent's office received an adverse report with the remark "the petitioner was not available in the given address and not produced proof of stay and could not get any information from people from neighbouring flats" from the Commissioner of Police on 13.6.2004. It is further submitted

that as the office of the second respondent had received adverse report twice, the decision was taken to close the case and the same was intimated to the first petitioner on 21.6.20 04.

14. Subsequently, an unsigned letter was received from the first petitioner, requesting for reopening of the closed case. The first petitioner's request would have been entertained if she had met the second respondent with a written request duly signed by her. The first petitioner has approached this Court without availing the remedial steps available to her. The other allegations relating to manhandling and the losing of the job by the second petitioner as a result of any default on the part of the respondent were also denied.

15. Mr.Ramakrishna Reddy further contends that the passport office cannot be blamed for the default on the part of the first petitioner herself in not being present at the place of residence in the address given by herself and when there was no proper proof of residence, the request of the first petitioner was rightly turned down.

16. I have considered the submissions of both sides.

17. The entire episode appears to be the result of mostly due to the impractical approach by the Authorities and to some extent, due to the failure on the part of the first petitioner to have been present at the address at the time of inspection by the police, pursuant to her application for duplicate passport.

18. The reason for not permitting the first petitioner to depart appears to be due to some alleged damage to the security thread of the passport. To the extent of having entertained a doubt regarding its genuineness, the action of the Immigration Authorities may be acceptable thus requiring clarification from passport office. But whatever happened thereafter could have been avoided if only the passport office had dealt with the issue in a proper manner with some human touch having regard to the urgency involved. As regards the passport office, all that was required to be done was to verify the corresponding records, which would have clearly disclosed whether the passport was a genuine one or not. It is not the case of the passport office that the passport in this case was either a forged or manipulated one or a fake passport. It was apparently damaged due to efflux of time and admittedly containing its earlier endorsements. Therefore, when the passport authorities were satisfied about the genuineness of the passport and considering the plight of the petitioners, the passport office ought to have issued a certificate of genuineness or in whatever manner the immigration authorities would require in such situations instead of having directed the first petitioner to obtain a duplicate passport, which requirement cannot be immediately complied with. Then started the series of troubles for the first petitioner. On the first occasion, as she was not available in the address given by her, an adverse report had been sent with the remark "insufficient address". Second time also the same thing had happened, which is explained by the first petitioner that she was not prese nt at the time of visit of the police officer, as she had left the house to visit her mother at Besant Nagar,

but the officer was duly informed so by her husband.

19. At any rate, the respondents should have been considerate enough to appreciate that the first petitioner's husband is a British citizen and as such, the first petitioner's stay at India/Chennai may not be confined to a particular permanent address. Even a permanent resident could have been absent at the time of inspection and the police verification could have been carried out once again. The respondents need not have adopted such a wooden and mechanical approach, ignoring the anxiety on the part of the person in the position of the petitioners who have to leave the country for their livelihood. The respondents, passport as well as police officials should have put themselves in the place of the petitioners. It is not the case of the respondents that there was any suspicion about the genuineness of the passport, much less any adverse information about the first petitioner. That being so, instead of giving a due certificate of genuineness immediately thereon, the first petitioner was directed to apply for a duplicate passport which was totally unnecessary. Assuming a duplicate passport was inevitable, at least thereafter the passport authorities could have adopted a more humane approach. The passport office certainly has the discretion to give priority to cases like the petitioners' episode of having been prevented to leave the country due to reasons beyond their control. There is no justification for having informed the first petitioner of the fact of adverse police report only after more than one month after the passport office had received the first adverse police report. The first adverse report was received on 6 .4.2004, whereas, the first petitioner was informed about it by the passport office only by their letter dated 17.5.2004. There is no reason or justification for such unreasonable and inordinate delay in informing the first petitioner. The attitude of the passport office is not correct, to say the least. It is not known as to whether the first petitioner or her husband or both had given any room for provoking such abnormal behaviour on the part of the passport office, as no counter affidavit has been filed till now. Even though R. Balasubramanian,J. had directed counter affidavit to be filed by 25.8.2004 in view of the urgency involved and the need for disposal of the above writ petition, no counter has been filed either by the passport office or the police in spite of serious allegations. Respondents-4 and 5 have not even given instructions to the Additional Government Pleader.

20. The passport office is undoubtedly discharging their duties efficiently by dealing with hundreds of applications each day but instances such as this case reflect lack of human touch and approach at some level.

21. No useful purpose will be served in discussing the issue any further. Considering the urgency and that there are no doubts against the genuineness of the passport and no allegations about the activities or antecedents of the first petitioner which might disentitle her to leave the country, I am inclined to pass the following order, and also considering the fact that in the affidavit itself, the first petitioner had stated that she was prepared to apply through "Tatkal" scheme but she was not allowed to do so, which allegation is not denied. It is not known why the said request should have been rejected.

22. The first petitioner shall present her application for the

passport under "Tatkal" scheme forthwith by complying with all the requirements under the "Tatkal" scheme and on receipt of such application, the Regional Passport Office shall issue the passport within three days after the submission of the application.

23. I do not propose to deal with the merits of the petitioners' claim for damages and the said claim is left open with liberty to the petitioners to move, if necessary, before the appropriate forum, as they may be advised.

24. The relief in this order is specifically restricted to the prayer for directions for issuing the passport forthwith. In the event of any further proceedings being taken by the petitioners claiming damages, the observations made in this order shall be ignored and shall not be relied upon.

With the result, the writ petition is ordered subject to the above observations.

Index : Yes
Internet: Yes

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